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IN THE

Supreme Court of the United States

OCTOBER TERM, 1937

No. 597

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

v.

CLARENCE M. FREEDMAN, *Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR RESPONDENT.

JOHN W. TOWNSEND,
National Press Bldg.,
Washington, D. C.
Attorney for Respondent.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
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CLARENCE M. FREEDMAN, *Respondent.*

MEMORANDUM FOR RESPONDENT.

Respondent does not oppose petitioner in his request that a writ of certiorari be granted herein.

The question involved is whether the annual salary of $3,000 received by respondent in 1932, for services rendered as an attorney in the Department of Justice of the Commonwealth of Pennsylvania, is exempt from the Federal income tax.

While respondent believes that the conclusion reached below by the Circuit Court of Appeals for the Third Circuit is correct, he agrees that the matter in controversy should be reviewed by this Court because, as stated in the petition, there is a conflict between the decision of the court below and that of the Circuit Court of Appeals for the Second Circuit in the case of *McLoughlin* v. *Commissioner*, 89 F. (2d) 699, No. 287, present term, certiorari granted October 11, 1937. The decision below, however, is in accord with the decisions of the Circuit Court of Appeals for the

Fifth Circuit in *Therrell* v. *Commissioner,* 88 F. (2d) 869, No. 128, present term, and *Tunnicliffe* v. *Commissioner,* 88 F. (2d) 873, No. 129, present term, certiorari granted in both on October 11, 1937.

In this case respondent was hired by the State performed services for the State, was responsible solely to State officials and had been promised an annual salary of $3,000 by the State. It follows, as a clear matter of law, that the legal obligation to pay the salary was solely that of the State itself. The petitioner contended below that the taxability of respondent's salary must be determined by an examination of the sources of the funds used by the State to discharge such legal obligation. This injects a test of exemption not heretofore sanctioned by any decision of this court, nor by any lower court prior to the decision in the *Therrell* case, *supra.*

Heretofore it has been considered that a person having the status of a government officer or employee, if engaged in carrying out usual governmental functions, is *per se* such an instrumentality of that government as to invoke the doctrine of reciprocal immunity. Since any change in the established principles will have far reaching consequences, and will vitally affect existing methods employed by the State of Pennsylvania in meeting the expenses of operating its Departments of Banking, Insurance, Highways, its Fish and Game Commissions, and other of its governmental activities, counsel for respondent ask for an opportunity to be heard in this case at the same time that arguments are submitted in the *Therrell* and *McLoughlin* cases, and consequently suggest that, if the writ be granted herein, this case be advanced and set for argument immediately following No. 287.

Respectfully submitted,

JOHN W. TOWNSEND,
National Press Bldg.,
Washington, D. C.
Attorney for Respondent.